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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,845	03/24/2004	Jon D. Swenson	4133-040082(P-5532/3)	5471
32182 7590 04/10/2007 DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON DICKINSON AND COMPANY [THE WEBB LAW FIRM] FRANKLIN LAKES, NJ 07414-1880			EXAMINER	
			MCCORKLE, MELISSA A	
			ART UNIT	PAPER NUMBER
			3763	
SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE	
3 MONTHS 04/10/2007		04/10/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary    Nelssa A. McCorkle   Art Unit   Melissa A. McCorkle   3763	45		Application No.	Applicant(s)				
Melissa A. McCorkle   3763			10/807,845	SWENSON ET AL.				
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of mem may be availated under the provisions of JCFR 1:130b, no event, however, may a reply be timely liked.  If NO orned for reply is specified above, the maximum statution period will apply and will expire SIX (8) MONTHS from the nating date of this communication.  Failurs to reply which the stort extended period for raply is specified above, the maximum statution period will apply and will expire SIX (8) MONTHS from the nating date of this communication.  Failurs to reply which the stort extended period for raply is specified above, the maximum statution period will apply and will expire SIX (8) MONTHS from the nating date of this communication, even if limitely filed, may reduce any semine parameters and patients.  Failurs to represent the application.  Status  1) □ Responsive to communication(s) filled on 24 March 2004.  2a) □ This action is FINAL. 2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queyle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1-29 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) □ Claim(s) 1-29 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) □ Claim(s) 1-29 is/are rejected.  7) □ Claim(s) 2-29 is/are rejected.  7) □ Claim(s) 2-29 is/are pending in the application and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application payor to require that any objection to the drawing(s) be held in abeyance. See			Examiner	Art Unit				
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## **DETAILED ACTION**

## Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain <u>a</u> patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-29 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-25 of prior U.S. Patent No. 6,726,649. This is a double patenting rejection.

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melissa A McCorkle Examiner Art Unit 3763

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